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SPEECH

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HON. DANIEL MORRIS, OF N. Y.,

OF
ON
THE CONFISCATION BILL.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JAN. 21, 1864.

The House having under consideration the confiscation of the property of rebels, Mr. MORRIS said:

Mr. SPEAKER: When the resolution now under discussion was before the Judiciary Committee, I approved of it without a thorough examination. I then thought as I now do, that it is not only safe but that it is wise to conform a law involving such weighty interests as does this to the provisions of the Constitution of the United States.

The Constitution, section three, article three, provides—

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

On the 17th day of July, 1862, in view of the treasonable rebellion in the land, and for the purpose of checking it, and of punishing the parties thereto, Congress passed and the President approved of "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." At the same date a joint resolution was passed and approved explanatory of the act in question. It is now proposed to amend the resolution of 1862 so as to make it and said act conform to the provisions of the Constitution. This being done, if any question arises under said act, it will be left to our courts for construction and adjudication. Section one of said act is as follows:

"That every person who shall hereafter commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall be declared and made free; or at the discretion of the court he shall be imprisoned for not less than five years and fined not less than \$10,000, and all his slaves, if any, shall be declared and made free; said fine shall be levied and collected on any or all of the property, real and personal, excluding slaves, of which the said person so convicted was the owner at the time of committing the said crime, any sale or conveyance to the contrary notwithstanding."

This section provides for the punishment of treason after an offender is found guilty. Section five of said act provides—

"That to insure the speedy termination of the present rebellion it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same and the proceeds thereof for the support of the Army of the United States."

It will be noticed that this section has no reference to treason or its punishment. The joint resolution of 1862 it is claimed restricts the operations of said act, as is evidenced by the following clause:

"Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

The resolution now pending proposes to amend and modify said clause and act, so that it shall read—

"Nor shall any punishment or proceeding under said act be so construed as to work a forfeiture of the estate of the offender except during his life, this amendment being intended to limit the operation and effect of the said resolution and act; and the same are hereby limited only so far as to make them conform to section three, article three of the Constitution of the United States."

I apprehend all will agree that under the act of 1862, were it not for the restrictive clause of the explanatory resolution now sought to be amended, the fee of the real estate of those named in section five could be confiscated, unless the provisions of the Constitution inhibit it. I will here say, though I do not propose to argue the question, nor is it germane to the subject in hand, that I have great doubt whether the resolution of 1862 in the least restricts the act referred to. This brings me to the question as to the propriety and the effect of the amendment.

My colleague [Mr. KERNAN] alleged—

"We have from the President a statement that any attempt by Congress or by the law-making power to make as a part punishment of treason the forfeiture of a greater estate in lands than a life estate of the offender would be unconstitutional."

It is sufficient, in reply to this, to say there is no attempt made, and no purpose even hinted at in the act of 1862,

"To make as a part punishment of treason the forfeiture of a greater estate in lands than a life estate."

The act provides for the punishment of treason. This the Constitution expressly authorizes. The punishment prescribed by section one is, first, death, and the freedom of the offender's slaves. Of this there is no complaint. Second, it provides for a fine and imprisonment of the offender. There is no forfeiture in this. The clause in the Constitution was not intended nor has it ever been held that it prevented the collection of fines by a sale of an offender's real estate. Even in slight misdemeanors this is done; much more can it be done in punishment of the highest crime known to our laws. Forfeiture in England was not the punishment prescribed by statute, it was the result of a conviction by virtue of the common law.

The attainder, taint of treason, worked a forfeiture independent of the statute. Somewhat analogous are some of our laws. Any person, upon conviction and sentence for a felony, forfeits his citizenship. This consequence results without its being named in the statute defining felony and prescribing its punishment. This effect is the taint or workings of felony. Should a colony of citizens from the United States set up a government in one of the islands of the Pacific, knowing that under the laws with which they were familiar a conviction and sentence for felony worked a forfeiture (loss) of citizenship without its being specified in the statute naming the punishment, and should they wish to restrict the effects of punishment to the strict terms of the statute, and to what must necessarily grow out of them, they would be likely to insert a clause in their organic law similar to the clause in question. The object would be not to inhibit the law-making power from declaring that a person convicted of felony should be imprisoned and forfeit his citizenship, but it would be to inhibit it unless it was made part of the penalty by statute.

A bill of attainder was an act of Parliament, and passed just as any other law. It named the particular person, defined the crime, and passed sentence. This is guarded against by article one, section nine, of our Constitution; but attainder remains; it is only the bill of attainder that is

prohibited. Attainder in itself is the taint, disgrace, or blemish growing out of a conviction or bill. Attainder of treason, like forfeiture, was not mentioned in the statute as a part punishment of treason; it grew out, or resulted in consequence, of a conviction or bill.

Now, as I understand the framers of the Constitution, they intended and did prohibit bills of attainder, and they provided that attainder, the taint, the fact of a conviction should not work a forfeiture or loss of civil rights or property in and of itself. Or in other words, the carrying of any sentence into execution necessarily works certain consequences. As the imprisonment of an offender necessarily deprives him of the society of his friends and the care of his property these need not be specified, but a loss of property or of citizenship after the expiration of his imprisonment does not necessarily follow. To work this result a warrant for it must be found either in the statutory or in the common law. The framers of the Constitution meant, then, to say, and they do say, nothing shall follow from a conviction for treason except what inevitably results, unless it is expressly stated by the law-making power. And then even this requires that the sentence must be carried into effect during the life of the offender. It cannot be done, as it was in England, after the death of the criminal. What adds force to this last view is the fact that forfeiture in law means a mode of changing title. When the title of property passes by contract it is voluntary. When it is changed by forfeiture, it is against the owner's will. If, then, we substitute the meaning of forfeiture for the word itself, the clause in the Constitution would read, "or take from the traitor his title to his property, except during his life;" that is, except it be done during his life. No matter how guilty the person is, if he dies before sentence the execution of the law is suspended. Hence the meaning is, not that the forfeiture terminates with the life of the offender, but that the judgment of the court must be executed during his life.

Section fifth of the act, as I have before stated, has no reference to treason or its punishment. This section is little else than a coercive war measure. The President as Commander-in-Chief of our armies, by his proclamation, might have directed the same thing. The rebels are treated as belligerents; hence it follows the Commander-in-Chief may seize their property and confiscate it. I do not clearly see how these rebels can claim the protection of the Constitution. Indeed, I do not know that they do, unless members on this floor are their agents and representatives. These men, as I understand it, despise and reject our Constitution. A person who claims the protection of law must respect and obey it. They do not reside with us, and they claim to be aliens. Talk then of the rights of a rebel under our Constitution, by him abjured and defied; talk of the rights of an outlaw! As well can I comprehend you when you talk of a holy sinner, an honest thief, or a loyal traitor. It is not questioned by the opponents of this bill that the entire personal estate of an offender may be seized and appropriated; but they insist only the life estate of his real property can be sold. Why is this? What warrant have they for this distinction? The Constitution and our courts are silent upon this point, and under the English laws there was no distinction of this kind. Have they rebel authority for it? If so, I have not seen it. But I am discussing what I did not intend to; my colleagues have treated this subject so ably that I shall pass on.

• It is alleged by my colleague [Mr. KERNAN] that the President held the act of 1862 to be unconstitutional, and had prepared his message to veto

it; and then the resolution of 1862 was prepared and passed to meet the views of the President upon this point. The President's scruples in this behalf arose, as it appears, from the supposition that the Constitution inhibited the confiscation of the fee of an offender's *real estate*. I understand my colleague concurs in this view. I have great respect for the opinions of the President, and I know my colleague to be a sound lawyer; hence, in differing with them on this point, I have had some misgivings. But when I remember that the amendment only proposes to conform the resolution and act of 1862 to the provisions of the Constitution, I congratulate the friends of this bill that the President at least, if not my colleague, has no tenable reason for differing with the Judiciary Committee.

This being so, I cannot see how any well-grounded objections can be urged against the amendment, unless the objector thinks the Constitution at fault.

I understand that the honorable gentleman from Pennsylvania, [Mr. STEVENS,] and some others, are in favor of an entire repeal of the resolution of 1862. The amendment in question practically does this, for the repeal of the resolution would leave the act to the construction of our courts, subject to the restrictions, if any, of the Constitution. The passage of this amendment does the same thing, and at the same time removes any objections that may have arisen or shall rise in the mind of the President. If I am correct, then will the amendment be concurred in by all except such as are mistaken, or think the Constitution is cruel and unjust. Will the opponents of this amendment arraign the Constitution?—Will they repudiate the courts and seek to usurp their prerogative? I remember when the honorable gentleman from Ohio [Mr. Cox] and his friends were great sticklers for our courts. Whence then this distrust?—Is it to be attributed to the progress of the age, or does he see a writing upon the wall indicative of the finger of truth and justice? The friends of the amendment have entire confidence in the Constitution, and they believe our courts upon examination will not fail to give its provisions full force and effect.

Here I might stop, and should do so, were it not for the line of remark indulged in by honorable gentleman on the other side of the House.—The eloquent gentleman from Ohio [Mr. Cox] holds that this bill “proposes to despoil the children of their inheritance for the crime of the parent.” In his kindness he manifested a marked sympathy for these innocent children of the traitors now waging war against the Government of their own choice. By what authority he speaks and acts for this class, once subjects and citizens of this Government, I am not informed. Sir, I admit the importance of charity and kindness; I concede that these children have an able and zealous champion, if not an apologist, for their outlaw fathers upon this floor. But I am not willing to admit the correctness of his conclusions, or that his sympathies are sufficiently comprehensive.

We are in the midst of a wicked and unprovoked rebellion. It was concocted and brought on by the ungrateful fathers of the children for whom the honorable gentleman so eloquently and feelingly pleads.

MR. COX. Do I understand the gentleman to charge that the member from Ohio to whom he has referred has ever been the apologist or the defender of a traitor?

MR. MORRIS. I do not so charge.

MR. COX. Then you do not make any such charge?

Mr. MORRIS. I do not, and the language will show I do not.

In our efforts to suppress this gigantic wrong we have, or soon shall have, expended one thousand million dollars, and filled some three hundred thousand new-made graves with murdered citizens. How is this enormous outlay of money to be repaid? Who ought to be punished for this wanton destruction of life? These are practical questions. These questions are to be answered by the agents of the loyal people here assembled. Three hundred thousand innocent men have been sacrificed; and shall their unoffending offspring now be required to pay the expenses consequent upon the overt acts of traitors and parricides? The real estate of the loyal soldier who sleeps in death at Chattanooga, at Gettysburg, or whose bones bleach uncared for beneath a southern sun, or furnish ornaments for inhuman mothers, may be sold to raise the taxes assessed to procure a substitute to fill his vacant place in the ranks of our armies. His widow, his orphan, guilty of no fault on their part, nor on the part of their murdered father, guilty of no crime, no prodigality, no neglect, are turned away homeless and beggard. They weep not for a home only, but also for a desolated country and the death of a husband and father. This scene the honorable gentleman entirely overlooked. His benign and Christian philanthropy yearned for the offspring of traitors, the progeny of fiends whose parricidal hands drip with the blood of butchered loyalists. In his magnanimity he would have them released from paying one penny into our depleted Treasury, and their real estate guarded with jealous care and restored to them in fee simple, with perhaps a group of human chattels to cultivate their lands and minister to their wants. Noble charity! Unexampled beneficence! Who would not wish to be a son of a traitor? The example will cheer and encourage not only Jeff. Davis, but the old arch traitor himself, and inspire the hope that his lost estate may yet be restored to his dear innocents now in arms against the Government—an *estate real* wrested in fee from the old fiend some six thousand years since by authority of the constitution and laws of Almighty God. What a stupendous wrong was done to his innocent heirs! Here is a field for the activities and the eloquence of the honorable gentleman.

Mr. CHANLER. Under what law and in what spirit would the gentleman refuse, when peace is granted to this country by the Power which rules all nations, to grant to the offspring of a traitor the right to live in this country, to enjoy the protection of the law, to inherit property, and to carry on the system of creation? Under what law would he deny to the offspring of his family the right of inheritance?

Mr. MORRIS, of New York. I will say to my colleague that I have not discussed that point yet, but I shall come to it after awhile; and I think I shall show him that I will extend to the children of a traitor the benign influences of Christianity; that I would protect them just as the children of murdered loyalists are protected at the North, notwithstanding their parents are guilty, and then they can earn their livelihood by prudence and industry, as northern children do.

Mr. CHANLER. I thank the gentleman. Then the shafts of his irony return upon himself. These children, according to his own admission, are to be protected under his own stipulation.

Mr. MORRIS, of New York. I would only reply that if the gentleman was not wounded he would not writhe.

I must confess I have my sympathies and my affinities; but they run in quite a different direction at this time. They mourn the error of the rebels in desolating our country and in entailing upon their children ignominy and poverty; they cluster around the orphans of the slaughtered "heroic dead." Allow me to say to the gentleman—

"The man who pauses in the paths of treason
Halts on quicksand—the first step ingulfs him."

I now ask, and I want this House to answer, is it unjust, is it wicked, is it unconstitutional to take the property of traitors to repair the ruin they themselves have wrought? I am not indifferent nor am I forgetful of their innocent offspring. They, in common with others, as is ever the case, must suffer in consequence of the errors, imprudence, mistakes, and crimes of their parents. They have this to encourage them, however, they are no worse off pecuniarily than thousands at the North; and if they are industrious and prudent, as are the children of the inhabitants of the laboring North, they will secure a competence, and reap a richer reward than idleness can ever bestow.

Should some villain in the absence of the honorable gentleman pilfer his goods, murder his wife, and burn his dwelling, would he ask no reparation; would not the law give it to him? Would his tenderness for the innocent children of the transgressor induce him to neglect his own? If the gentleman will undertake for all of the children who do not receive land in fee as the heirs of such as fail to transmit it to them in consequence of the prodigality, intemperance, and indiscretion of their fathers, saying nothing of crime, he will find ample scope for his benevolence and employment for life. Can it be said, in the language of the gentleman, "Such a system is the very wantonness and excess of tyranny?" If to take the property of a wrong-doer to pay in part the expenses of his own wilful acts is what the gentleman alleges, then must we look for a new code of morality. Heaven pardons upon repentance and restitution for the injury done. These are conditions precedent in all cases. Are traitors an exception?

A few words more, and I have done. My colleague [Mr. KERNAN] said:

"I do believe that if we love our country, if we hope to see our people ever again living peacefully under a united Government, we should, toward the *masses* of the people in the rebellious States, hold out every inducement which the Government honorably can hold out to induce them to desert the *secession leaders*."

These are noble words, and I most cordially concur in the sentiments thus eloquently expressed.

But when the question comes, how shall this be done? the honorable gentleman and myself differ very widely. I much fear my colleague did not reflect that the great masses in the rebel armies are non-landholders. I find a defect in our census. They should give the number of land-owners, and the amount owned by each. I would like to know just the number of land-owners and the amount owned by each in the several rebel and in the several loyal States. In the absence of this, and having no actual data, I can only say I have always understood that the most of the lands in the rebel States, especially the cotton and sugar-growing ones, are owed by planters, and that each plantation is composed of a large tract of land.

The number of land-owners, therefore, when compared with the balance of the population, must be small. I am also assured that these land-

owners, few as they are, for years have wielded the civil and the political influences which have controlled these States—that the white population, not owning lands, are as dependent and subservient to these “lords of the manor” as are the slaves. These land-owners are the men who inaugurated, and who are responsible for, the rebellion now desolating our country. The masses yielded to these lords of the soil as did the masses to the usurpations of Louis Napoleon in France. These land-owners and leaders of this insurrection are sustained by these masses, who are in the ranks of the rebel armies from necessity; and they and their leaders are fed and clothed from the labor of their slaves. Take these soldiers from their ranks, and these laborers from their fields and their shops, and where are these leaders?

The question is, how shall we win these masses from those who have thus deluded them? My colleague says by protecting, perpetuating, and securing to the heirs of these traitors their real estate in fee; thus, as I hold, enabling their descendants to continue a system that, like treason, works and has ever worked corruption of morals, destruction of civil rights, and which has begotten an aristocracy who are thundering at our gates and murdering our citizens. Will this withdraw the masses from their leaders?

History demonstrates that from the formation of any Government, a struggle arises between two elements for the mastery. This ever has been, and perhaps ever will be. This struggle is not, as some allege, between freedom and slavery, but between capital and labor. I care not to what country you turn, or to what age of the world you look, you will find marked illustrations. You will also find that wherever labor, an ordinance of Heaven, is respected and properly compensated, it is in the ascendant, and a free Government is the fruit. This follows as certainly and as necessarily as gain from the combined influence of sunshine and showers.—On the contrary, wherever capital gains the mastery, it becomes exacting, cruel, imperious, insolent, oppressive; labor is despised, degraded, and the fruit is an intolerable aristocracy.

This fruit wholly matured begets a monarchy. This, I insist, holds true in all ages and countries. It is as certain in a land where there are no negroes as it is where they abound. This truth is evidenced in our own country, as well as in others. At the North labor is respected, encouraged, compensated, and is the ruling power. Her lakes, rivers, canals, and workshops hum with industry, and the sterile lands speak in eloquent language of its resources, happiness, and wealth. Here, too, freedom is as vigorous and stalwart as are the oaks of the forest. The avenues to place are as open to the sons of the laboring man as they are to the rich; and usually the former are found traversing them in reward of their intelligence and industry. This is not that northern men have any pre-eminence over others, but it is by reason of a system that produces this result. Let this system pervade our entire nation and its future will be as incomprehensible as eternity and as enduring as time.

Look at the States in rebellion. Here labor is despised, degraded, and uncompensated. Capital has long lorded it over its discomfited rival, and the fruit is apparent. It is now being gathered in tears and in blood. This is not because southern men are wanting in kindness or Christianity as compared with others; this is not because black men are there; but it is the inevitable fruit of a system. The practical workings would be the same with any race or color; adopt the same system, other things being

equal, in Russia, England, or Ireland, and the same consequences will follow. I therefore talk of a system; a system as ruinous to white men as to colored; as ruinous to a free Government as is disloyalty. I point now to its workings as evidence of its danger and its wickedness. He who expects to remedy this evil by cherishing its cause, he who expects harmony without destroying the apple of discord, is as rational as is the inebriate who expects to repair his wasted fortunes, restore his health, and give comfort and happiness to his family by still adhering to his cups.

Sir, I would win these masses from their secession leaders by the hope of justice, protection, and freedom. I would confiscate the fee in the lands of these rebel knaves, and then I would parcel it in small farms and sell it at a living price to any actual settler who could purchase and pay for it, be he whom he may. Hold out this boon, set this beacon-light upon the hill-tops, and the masses will flee their leaders and hasten to our standard as "the panting heart to a water-brook." Do this and the rebellion and the system that begat it are forever dead; do this and slavery and the system that loves it are dead. The hopes of a home, the possession and ownership of land guarantied to those who have been coerced into this rebellion, will deplete the rebel ranks, strengthen our Government, replenish our Treasury, and inaugurate a system that will regenerate, redeem, and bless the entire South. Slavery, say you? The problem of slavery has been solved; if it ever had protection under the Constitution, the South have taken it out. The Almighty, as of old, has interposed, and the oppressed are passing through the receding waters, while their oppressors are about to be engulfed in the returning waves. What would I do with the slaves? I would treat him as a man; he should have the rights of a citizen and the protection of our laws. Until this is secured to him Heaven will chasten, and we can have no permanent peace. These things being done, and we shall have a nation, one in purpose, one in hope, one in sympathy, one in love, one in perpetuity. This being done, enterprise, industry, manufactures, commerce, the school-house, a code of laws by and under which all are equally protected, with free labor, and a development of the resources of the South now latent, will increase the material wealth of our country within thirty years, thereby furnishing a sum sufficient to pay our national debt, and feed, clothe, educate, and induct into the paths of industry and usefulness the innocent children for whom so much sympathy has been manifested.

Sir, I look to the future in hope. A system will attain throughout our entire nation under which labor shall be respected and protected. With this system, and universal freedom, our national capital, our cities and towns both North and South, shall hum with business; our farmers shall drive their teams "afield" with joy; the Potomac, the rivers of our nation shall join in the labors of man, and wipe the perspiration from their ponderous brows as they bear upon their bosoms the accumulating products of the several States to our seaboard. And then old ocean, catching the enthusiasm at early dawn, shall rouse from his granite bed, fling back his covering, leap from his couch, and smilingly engage in a business which shall bring wealth to our nation and Christianity and universal freedom to man.

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